

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the Agreement of June 1, 1960 when they deprived Carmen A. G. Soto, J. Hefferman, L. Palacios, and R. E. Harris, Houston, Texas, the right to work their regular assignments as Car Inspectors in the train yard at Settegast yard on February 16, 1976.
2. That accordingly, The Missouri Pacific Railroad Company be ordered to compensate Carmen - Car Inspectors A. G. Soto, J. Heffermen, L. Palacios, and R. E Harris in the amount of twelve (12) hours each at the straight time rate for February 16, 1976.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In brief, this dispute centers on the Carrier's obligations or latitude in designating employes to work on a holiday when the circumstance arises that the Note to Rule 5 of the Agreement has been complied with in timely fashion, but when manning requirements change less than five days prior to a holiday.

The Note to Rule 5 reads as follows:

"Note: Notice will be posted five (5) days preceding a holiday listing the names of employes assigned to work on the holiday. Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the

"holiday had not occurred and will protect the work. Local Committee will be advised of the number of men required and will furnish names of the men to be assigned but in event of failure to furnish sufficient employees to complete the requirements, the junior men on each shift will be assigned beginning with the junior man."

The holiday in question was February 16, 1976, celebrated as Washington's Birthday, and the four claimants would have been regularly assigned to work had the day not been designated as a holiday.

The record shows that the Carrier properly followed the requirements of Note to Rule 5 initially by advising the Local Committee of the number of men required on the holiday. The Committee furnished the names, and the list was posted on February 6, 1976, more than five days preceding the holiday.

On the day of the holiday itself, the Carrier found that additional employees would be required for the holiday. On this point, there is no contention that the Carrier was acting in bad faith. For the purposes of this dispute, it can be accepted that the revised manpower requirements arose after it was too late to make a posting five days prior to the holiday.

The Carrier assumed that, under the circumstances, it was free of the specific requirements of the Note to Rule 5. The General Car Foreman requested Carmen on duty to supply the names of additional employees to be used. Names were received, resulting in the assignment of such employees to the work. None of the Claimants was among those assigned.

The Organization seeks the application of the Note to Rule 5, even in the necessary absence of a five-day notice. Specifically, this requires that, "Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred". The Organization contends that the Claimants specifically fall in this category. Further, such assignment is to be through the "Local Committee", and simply seeking the assistance of Carmen on duty to fill the positions does not meet this requirement.

In the particular circumstances related herein, the Carrier obviously could not have fully complied with the Note to Rule 5, since it could not have given the five days' notice for work requirements unanticipated until the holiday itself. But aside from this point of timing, the Board finds no justification for the Carrier to believe itself free of the requirements of the remainder of the Note to Rule 5. Nor does the Carrier obviate its responsibility under the Note by requesting help in work assignment from the Carmen on duty.

Award No. 7443 (Wallace) addresses itself to the timing of the Note to Rule 5 notice, finding the Carrier without liability for a supplementary posting less than five days prior to the holiday. But Award No. 7443 does not suggest that the other requirements of the Note to Rule 5 disappear once an original five-day notice has been posted.

Award No. 5236 (Johnson), among others, states succinctly:

"The Note to Rule clearly provides that when positions have to be filled on holidays they shall be filled from among those who would have worked if the holiday had not occurred."

The Board finds this interpretation applicable here as well, even if the Carrier necessarily would have been unable to comply with the five-day notice for the additional employees.

Involved here is holiday work, payable at a punitive rate rather than the pro rata rate, regardless of which employees performed the work. As to remedy required, the Board follows the reasoning in Award No. 5956 (Zumas).

As to the four Claimants, the record is less than clear as to whether three or more than three additional positions worked in addition to those listed on the February 6 posting. In implementing the Award, the Board looks to the Organization and the Carrier to agree upon these matters of fact.


A W A R D

Claim sustained, in the manner indicated in the findings

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of October, 1978.